

(2022) 07 GAU CK 0017

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 9324 Of 2019

Ananta Patowary

APPELLANT

Vs

State Of Assam And 3 Ors.

RESPONDENT

Date of Decision : 25-07-2022

Acts Referred:

Assam Police Manual — Rule 68

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20(II)(B), 42

Citation : (2022) 07 GAU CK 0017

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : P Kataki

Final Decision : Disposed Of

Judgement

1. Heard Mr. P. Kataki, learned counsel for the petitioner and Mr. T.C. Chutia, learned Addl. Senior Government Advocate for the respondents in the Home Department of the Government of Assam including the Police Authorities.

2. The petitioner who was working as an ASI in the Assam Police Radio Organization (APRO) was arrested on 09.01.2004 in connection with Dispur P.S. Case No. 135/2004 under Section 42 of the NDPS Act. Upon being in detention for more than 48 hours, the petitioner was placed under suspension by an order dated 13.01.2004 and a departmental proceeding was also drawn against him. The Dispur P.S. Case No. 135/2004 resulted in Sessions (Spl.) Case No. 193(K)/2004 passed by the Addl. Sessions Judge, Kamrup, which was given a final consideration by the judgment dated 26.04.2005. By the said judgment, the petitioner was convicted under Section 20(II)(B) of the NDPS Act and was sentenced to undergo rigorous imprisonment for 5(five) years and a fine of Rs. 10,000/-. On an appeal being carried against the judgment of conviction in CrI. Appeal No. 90/2005, the Appellate Court in its judgment dated 09.05.2005 arrived at its conclusion that there was no evidence that the seized NDPS articles were sealed as required under the law and that the articles were under the

control of certain other extraneous elements. Accordingly, the submission of the accused-appellant regarding serious doubt on the procedure was accepted by the Appellate Court and consequently, the conviction and sentence was set aside. The relevant portion of the judgment of the Appellate Court dated 09.05.2005 is extracted as below:

"The law is well settled that the burden is on the prosecution to show as to how the contraband was handled after seizure. But in the present case, we find that there is absolutely no evidence that the seized article was sealed as required under law. In the contrary the VDP people set over it for more than eight hours and the special messenger kept the goods for seven days.

We find force in the submissions of the learned counsel that serious doubt has arisen as to the manner in which the alleged contraband was handled prior to the seizure and after seizure and the benefit of this must go to the accused.

In the result, we allow this appeal and set aside the order of conviction and sentence. The accused appellant is acquitted. He be set at liberty forthwith if not wanted with any other case."

3. In the aforesaid circumstance, the order dated 16.06.2005 was passed in the disciplinary proceeding by which the petitioner was dismissed from service, against which he preferred a departmental appeal which was given its consideration by the Deputy Inspector of Police, CID, Assam and by the order dated 06.08.2011 the appeal stood dismissed. Being aggrieved, the petitioner instituted WP(C) No. 5233/2011 which was given its final consideration by the order dated 11.08.2015, by which a conclusion was arrived that the charge No. 2 against the petitioner was neither examined by the enquiry officer nor by the disciplinary authority. Accordingly, the disciplinary authority was directed to take a fresh decision regarding the reinstatement of the petitioner in the circumstance as was noted in the said judgment. It was further provided that till such decision is taken the petitioner shall be deemed to have been under suspension.

4. In the resultant circumstance, against the requirement of the judgment dated 11.08.2015 to take a fresh decision, the disciplinary authority again upheld the order of dismissal against which the petitioner preferred an appeal before the Addl. Director General of Police, CID. The Deputy Inspector General of Police, CID, by the order dated 22.09.2016 came to a conclusion that the order of dismissal of the petitioner was grossly inappropriate which required to be withdrawn. Accordingly, the petitioner was reinstated w.e.f. the date of his dismissal dated 16.06.2015.

5. As the petitioner was not paid the full backwages by the order of reinstatement, he preferred an appeal before the Director General of Police (Communication), APRO under Rule 68 of the Assam Police Manual. As the appeal was not given its consideration, the petitioner instituted WP(C) 5568/2017, which was given its consideration by the order dated 12.06.2019. By the said order, a direction was issued to the respondents to issue a fresh order

for regularizing the period of service of the petitioner during the period of suspension and also from the date of dismissal up to the date of reinstatement in service. As regards the payment of salary for the aforesaid period, it was provided that the authorities would pass appropriate order.

6. In the resultant circumstance, the order dated 21.08.2019 had passed by the Superintendent of Police (Communication), by which it was provided that the period of suspension from 08.01.2004 to 09.12.2015 and the period of dismissal from 10.12.2015 to 27.10.2016, shall be treated to be in service which shall be counted for all purposes except for the purpose of arrear salary.

7. Being aggrieved by refusal to pay the salary for the suspended period and the period for which the petitioner was dismissed from service, this writ petition is instituted. The sole ground urged upon by Mr. P. Kataki, learned counsel for the petitioner is that the order of rejecting the arrear salary for the aforesaid periods by the order dated 21.08.2019 of the Superintendent of Police (Communication) does not contain any reason. We are remanding the matter back to the Superintendent of Police (Communication), Assam for the purpose of passing a reasoned order on the rejection of the backwages of the petitioner. We are making it clear that we are not remanding it for any other purpose or expressing any view on the stand of the respondents that the petitioner is not entitled to the backwages as prayed. In doing so, the Superintendent of Police (Communication), Assam may also take note of the law as regards the payment of backwages i.e. as to whether the exoneration in the proceedings was an honourable exoneration or it was based on technical reasons. Accordingly, the Superintendent of Police (Communication) may pass a fresh order giving the reasons and by taking note of the aforesaid provision of law as indicated. Any order to be passed by the Superintendent of Police (Communication) shall prevail over the earlier order of 21.08.2019.

Writ petition stands disposed of as indicated above.